

REFERENCE TITLE: **licensing procedures; cable television**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2812

Introduced by
Representative Nelson

AN ACT

**AMENDING SECTIONS 9-505 AND 9-506, ARIZONA REVISED STATUTES; RELATING TO
CABLE TELEVISION SYSTEMS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-505, Arizona Revised Statutes, is amended to
3 read:

4 9-505. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Area of jurisdiction" means that part of a city or town, or that
7 part of the unincorporated area of a county, or both when applied to a cable
8 television system within parts of more than one jurisdiction, for which a
9 license is issued.

10 2. "CABLE OPERATOR" MEANS A PERSON THAT IS ISSUED A LICENSE BY THE
11 LICENSING AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION
12 SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS.

13 3. "CABLE SERVICE" MEANS THE TRANSMISSION TO SUBSCRIBERS OF VIDEO
14 PROGRAMMING OR OTHER PROGRAMMING SERVICE AND SUBSCRIBER INTERACTION, IF ANY,
15 THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO PROGRAMMING OR OTHER
16 PROGRAMMING SERVICE.

17 ~~2-~~ 4. "Cable television system" means any facility ~~that, in whole or~~
18 ~~in part, receives directly, or indirectly over the air, and amplifies or~~
19 ~~otherwise modifies the signals transmitting programs broadcast by one or more~~
20 ~~television or radio stations and distributes such signals together with such~~
21 ~~other signals as authorized by the federal communications commission and the~~
22 ~~licensing authority, by wire or cable to subscribing members of the public~~
23 ~~who pay for such service, but the term shall not include:~~ CONSISTING OF A SET
24 OF CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION AND
25 CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE THAT INCLUDES
26 VIDEO PROGRAMMING AND THAT IS PROVIDED TO MULTIPLE SUBSCRIBERS WITHIN A
27 COMMUNITY. CABLE TELEVISION SYSTEM DOES NOT INCLUDE:

28 (a) ~~Any such~~ A facility that serves fewer than fifty subscribers.

29 (b) ~~Any such~~ A facility that serves ~~only the residents of one or more~~
30 ~~apartment dwellings under common ownership, and commercial establishments~~
31 ~~located on the premises of such apartment dwellings~~ SUBSCRIBERS WITHOUT USING
32 ANY PUBLIC STREET, ROAD OR ALLEY.

33 (c) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE TELEVISION SIGNALS
34 OF ONE OR MORE TELEVISION BROADCAST STATIONS.

35 (d) A FACILITY OF A COMMON CARRIER THAT IS SUBJECT, IN WHOLE OR IN
36 PART, TO 47 UNITED STATES CODE SECTIONS 201 THROUGH 276, EXCEPT THAT THE
37 FACILITY IS CONSIDERED A CABLE TELEVISION SYSTEM, OTHER THAN FOR PURPOSES OF
38 47 UNITED STATES CODE SECTION 541(c), TO THE EXTENT THE FACILITY IS USED IN
39 THE TRANSMISSION OF VIDEO PROGRAMMING DIRECTLY TO SUBSCRIBERS, UNLESS THE
40 EXTENT OF THE USE IS SOLELY TO PROVIDE INTERACTIVE ON-DEMAND SERVICES.

41 (e) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 UNITED STATES CODE
42 SECTION 573.

43 (f) A FACILITY OF AN ELECTRIC UTILITY THAT IS USED SOLELY FOR
44 OPERATING ITS ELECTRIC UTILITY SYSTEM.

1 ~~3.~~ 5. "Existing cable television ~~systems~~ SYSTEM" means a cable
2 television system in operation on April 1, 1974, a cable television system
3 under construction on April 1, 1974, or a cable television system which had
4 received authorization for construction as of April 1, 1974.

5 6. "GROSS REVENUES" MEANS ALL CASH, CREDITS, PROPERTY OF ANY KIND OR
6 NATURE OR OTHER CONSIDERATION, LESS RELATED BAD DEBTS UP TO A MAXIMUM OF ONE
7 AND ONE-HALF PER CENT ANNUALLY OF THE CASH, CREDITS, PROPERTY OR OTHER
8 CONSIDERATION THAT IS RECEIVED DIRECTLY OR INDIRECTLY BY THE CABLE OPERATOR,
9 ITS AFFILIATES, SUBSIDIARIES OR PARENT AND ANY PERSON, FIRM OR CORPORATION IN
10 WHICH THE CABLE OPERATOR HAS A FINANCIAL INTEREST OR WHICH HAS A FINANCIAL
11 INTEREST IN THE CABLE OPERATOR AND THAT IS DERIVED FROM THE CABLE OPERATOR'S
12 OPERATION OF ITS CABLE TELEVISION SYSTEM TO PROVIDE CABLE SERVICE IN THE AREA
13 OF JURISDICTION, INCLUDING ALL REVENUE FROM ALL CHARGES FOR CABLE SERVICE
14 PROVIDED TO SUBSCRIBERS, ALL CHARGES TO THE SUBSCRIBER FOR THE INSTALLATION,
15 REMOVAL, CONNECTION AND REINSTATEMENT OF EQUIPMENT NECESSARY FOR A SUBSCRIBER
16 TO RECEIVE CABLE SERVICE, ALL LEASE INCOME THE CABLE OPERATOR RECEIVES FROM
17 THE LEASE OF ITS FACILITIES LOCATED IN THE PUBLIC STREETS, ROADS AND ALLEYS,
18 UNLESS THE SERVICES THAT THE LESSEE PROVIDES OVER THE LEASED FACILITIES ARE
19 SUBJECT TO A TRANSACTION PRIVILEGE TAX OF THE LICENSING AUTHORITY, AND ANY
20 OTHER INCOME DERIVED FROM THE CABLE SYSTEM, INCLUDING FORFEITED DEPOSITS
21 RECOVERED, SALE OR RENTAL BY THE CABLE OPERATOR TO SUBSCRIBERS OF EQUIPMENT
22 FOR THE PROVISION OF CABLE SERVICE, LATE CHARGES, INTEREST INCOME, SALE OF
23 PROGRAM GUIDES AND ALL OTHER RECEIPTS FROM SUBSCRIBERS. GROSS REVENUES DO
24 NOT INCLUDE REVENUE FROM ANY CHARGES FOR THE INSERTION BY THE CABLE OPERATOR
25 OF COMMERCIAL ADVERTISING ON THE CABLE TELEVISION SYSTEM, ANY CHARGES FOR THE
26 USE OR LEASE OF STUDIO FACILITIES OF THE CABLE TELEVISION SYSTEM, ANY CHARGES
27 FOR THE USE OR LEASE OF LEASED ACCESS CHANNELS OR BANDWIDTH, THE PRODUCTION
28 FOR TRANSMISSION OVER THE CABLE TELEVISION SYSTEM OF VIDEO, PROGRAMMING BY
29 THE CABLE OPERATOR, INCLUDING PROGRAMMING PRODUCED BY ITS MOBILE FACILITIES,
30 THE SALE, EXCHANGE, USE OR CABLECAST OF ANY PROGRAMMING BY THE CABLE OPERATOR
31 IN THE AREA OF JURISDICTION, REVENUES RECEIVED FROM PROGRAMMERS OF HOME
32 SHOPPING SERVICES FOR SALES TO THE CABLE OPERATOR'S SUBSCRIBERS, LAUNCH FEES
33 OR MARKETING EXPENSE REIMBURSEMENTS PAID BY PROGRAMMERS, LICENSE FEES, TAXES
34 OR OTHER FEES OR CHARGES THAT THE CABLE OPERATOR COLLECTS AND PAYS TO ANY
35 GOVERNMENTAL AUTHORITY, ANY INCREASE IN THE VALUE OF ANY STOCK, SECURITY OR
36 ASSET OR ANY DIVIDENDS OR OTHER DISTRIBUTIONS MADE IN RESPECT OF ANY STOCK OR
37 SECURITIES.

38 ~~4.~~ 7. "Intergovernmental contract" means the joint exercise of powers
39 authorized by title 11, chapter 7, article 3.

40 ~~5.~~ 8. "License" means that ordinance or resolution which contains the
41 right, authority or grant, given by a licensing authority enabling ~~the~~
42 ~~license holder~~ A PERSON to construct, operate and maintain a cable television
43 system.

1 ~~6-~~ 9. "Licensing authority" means the board of supervisors of a
2 county or the governing body of an incorporated city, INCLUDING A CHARTER
3 CITY, or town.

4 10. "OTHER PROGRAMMING SERVICE" MEANS INFORMATION THAT A CABLE OPERATOR
5 MAKES AVAILABLE TO ALL SUBSCRIBERS GENERALLY.

6 11. "VIDEO PROGRAMMING" MEANS PROGRAMMING THAT IS PROVIDED BY, OR
7 GENERALLY COMPARABLE TO PROGRAMMING PROVIDED BY, A BROADCAST TELEVISION
8 STATION.

9 Sec. 2. Section 9-506, Arizona Revised Statutes, is amended to read:

10 9-506. Authority to issue license; limitations

11 A. For the purpose of authorizing and regulating the construction,
12 operation and maintenance of cable television systems, the licensing
13 authority of a city, INCLUDING A CHARTER CITY, or town for an incorporated
14 area, or the licensing authority of the county for unincorporated areas,
15 either individually or jointly by intergovernmental contract, may issue a
16 license to any person to use public streets, roads and alleys, and shall
17 impose conditions, restrictions and limitations upon the use of ~~such~~ public
18 streets, roads and alleys, and upon the construction, operation and
19 maintenance of cable television systems.

20 B. SUBJECT TO THE LIMITATIONS OF THIS SECTION, ~~any such~~ A licensing
21 authority may adopt resolutions or ordinances implementing and controlling
22 the license or joint license, ISSUE A LICENSE CONTAINING OTHER TERMS AND
23 CONDITIONS AND IMPOSE A LICENSE FEE ON GROSS REVENUES. ~~The license issued by~~
24 ~~a licensing authority may contain provisions, and may establish a permit fee,~~
25 ~~not to exceed the limits established by the federal communications~~
26 ~~commission.~~ IN ADDITION TO THE LIMITATIONS OF THIS SECTION, THE LICENSE IS
27 SUBJECT TO THE LIMITS ESTABLISHED BY THE COMMUNICATIONS ACT OF 1934, AS
28 AMENDED (47 UNITED STATES CODE SECTIONS 151 THROUGH 615b) AND THE FEDERAL
29 COMMUNICATIONS COMMISSION.

30 C. OTHER THAN THE LICENSE FEE ON GROSS REVENUES AUTHORIZED BY THIS
31 SECTION AND TRANSACTION PRIVILEGE TAXES AS PROVIDED IN THIS SUBSECTION, A
32 LICENSING AUTHORITY MAY NOT LEVY A TAX, RENT, FEE OR CHARGE, HOWEVER
33 DENOMINATED, ON A CABLE OPERATOR FOR THE USE OF THE PUBLIC STREETS, ROADS OR
34 ALLEYS TO PROVIDE CABLE SERVICE OR LEVY A TAX, FEE OR CHARGE ON THE PRIVILEGE
35 OF ENGAGING IN THE BUSINESS OF PROVIDING CABLE SERVICE IN THE AREA OF
36 JURISDICTION. TAXES, RENTS, FEES AND CHARGES INCLUDE ALL ACCESS CHANNEL
37 SUPPORT, RENTAL, APPLICATION, CONSTRUCTION, PERMIT, INSPECTION, INCONVENIENCE
38 AND OTHER FEES AND CHARGES RELATED TO A CABLE OPERATOR'S USE OF THE PUBLIC
39 STREETS, ROADS AND ALLEYS, AND:

40 1. ANY TRANSACTION PRIVILEGE TAXES OTHERWISE AUTHORIZED BY LAW TO BE
41 LEVIED ON THE BUSINESS OF PROVIDING CABLE SERVICE OR IN RELATION TO USE OF
42 THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE CABLE SERVICE MAY BE LEVIED ON
43 A CABLE OPERATOR IF THE TAXES ARE LEVIED ONLY ON GROSS REVENUES AND THE RATE
44 OF THE TAXES IS SUBJECT TO PARAGRAPH 3 OF THIS SUBSECTION. THIS SUBSECTION

1 DOES NOT AUTHORIZE THE IMPOSITION OF TRANSACTION PRIVILEGE TAXES ON
2 INTERSTATE TELECOMMUNICATIONS SERVICES.

3 2. THE LICENSE FEE AND ANY TRANSACTION PRIVILEGE TAXES CONSTITUTE A
4 FRANCHISE FEE WITHIN THE MEANING OF 47 UNITED STATES CODE SECTION 542(g)(1).

5 3. UNDER NO CIRCUMSTANCES MAY THE TOTAL OF THE RATES OF THE LICENSE
6 FEE AND OF ANY TRANSACTION PRIVILEGE TAXES ON GROSS REVENUES LEVIED OR
7 ASSESSED BY A LICENSING AUTHORITY FOR THE PRIVILEGE OF PROVIDING CABLE
8 SERVICE AND RELATED USE OF THE PUBLIC STREETS, ROADS OR ALLEYS TO PROVIDE
9 CABLE SERVICE EXCEED A RATE OF FIVE PER CENT, EXCEPT DURING THE TRANSITION
10 PERIOD FOR CERTAIN LICENSES PROVIDED IN SUBSECTION H OF THIS SECTION.

11 4. A CABLE OPERATOR SHALL PASS ON TO SUBSCRIBERS ANY REDUCTION IN THE
12 AMOUNT OF FEES, TAXES OR OTHER CHARGES PAID BY A CABLE OPERATOR AND ITEMIZED
13 TO SUBSCRIBERS THAT RESULTS FROM THE IMPLEMENTATION OF THIS AMENDMENT TO THIS
14 SECTION.

15 D. A LICENSING AUTHORITY MAY NOT REQUIRE A CABLE OPERATOR TO PROVIDE
16 IN-KIND SERVICES, MAKE IN-KIND PAYMENTS OR PAY A FEE IN ADDITION TO THE
17 MONETARY LICENSE FEE LEVIED OR ASSESSED AS PROVIDED IN THIS SECTION AS PART
18 OF OR AS A CONDITION OF ISSUING A LICENSE TO PROVIDE CABLE SERVICE, EXCEPT
19 THAT:

20 1. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PROVIDE
21 CHANNEL CAPACITY TO TRANSMIT PROGRAMMING OVER WHICH THE CABLE OPERATOR
22 EXERCISES NO EDITORIAL CONTROL EXCEPT AS AUTHORIZED BY 47 UNITED STATES CODE
23 SECTION 531(e). THE CHANNEL CAPACITY SHALL BE LIMITED TO NOT MORE THAN TWO
24 CHANNELS OF PUBLIC, EDUCATIONAL OR GOVERNMENTAL ACCESS PROGRAMMING IN THE
25 BASIC SERVICE TIER OF THE CABLE TELEVISION SYSTEM AND NOT MORE THAN TWO
26 CHANNELS OF NONCOMMERCIAL GOVERNMENTAL PROGRAMMING, AT LEAST ONE OF WHICH MAY
27 BE PROGRAMMED BY THE FEDERAL GOVERNMENT, IN THE DIGITAL PROGRAMMING TIER OF
28 THE CABLE TELEVISION SYSTEM. IF CHANNEL CAPACITY IS REQUIRED, THE
29 PROGRAMMING SHALL BE SPECIFIED IN THE LICENSE AND THE CABLE OPERATOR MAY
30 REQUIRE THAT THE CHANNELS REGULARLY DISPLAY AN UNOBTRUSIVE LOGO OR OTHER
31 SUITABLE IDENTIFIER OF THE CABLE OPERATOR AS SET FORTH IN THE LICENSE.

32 2. A LICENSING AUTHORITY MAY REQUIRE A CABLE OPERATOR TO PROVIDE THE
33 BASIC SERVICE TIER OF CABLE SERVICE AT NO MONTHLY SERVICE CHARGE TO OFFICES
34 AND FACILITIES OF THE LICENSING AUTHORITY.

35 3. THE VALUE OF ANY CHANNEL CAPACITY PROVIDED PURSUANT TO PARAGRAPH 1
36 OF THIS SUBSECTION, INCLUDING ANY CAPITAL COSTS AND CHARGES FOR OR IN SUPPORT
37 OF ITS USE, AND OF BASIC SERVICE PROVIDED PURSUANT TO PARAGRAPH 2 OF THIS
38 SUBSECTION MAY NOT BE OFFSET AGAINST THE LICENSE FEE LEVIED OR ASSESSED UNDER
39 THIS SECTION.

40 E. THIS SECTION DOES NOT PROHIBIT A CABLE OPERATOR FROM AGREEING TO
41 PROVIDE IN-KIND SERVICES OR MAKE IN-KIND PAYMENTS IN THE AREA OF JURISDICTION
42 THAT ARE PROHIBITED BY SUBSECTION D OF THIS SECTION IF THE AGREEMENT WITH THE
43 LICENSING AUTHORITY IS NOT PART OF, OR ENTERED INTO AS A CONDITION OF BEING
44 ISSUED, A NEW, RENEWED OR AMENDED LICENSE TO PROVIDE CABLE SERVICE. AN
45 AGREEMENT THAT REQUIRES IN-KIND CABLE SERVICE OR PAYMENTS SHALL SET FORTH THE

1 TOTAL ANNUAL FAIR MARKET VALUE OF THE IN-KIND CABLE SERVICE AND PAYMENTS,
2 WHICH SHALL BE LESS THAN OR EQUAL TO AND OFFSET AGAINST THE LICENSE FEE
3 LEVIED OR ASSESSED ANNUALLY PURSUANT TO THIS SECTION. THE LICENSE SHALL
4 AUTHORIZE THE CABLE OPERATOR TO RETAIN LICENSE FEES AND TAXES COLLECTED FROM
5 ITS SUBSCRIBERS IN THE AMOUNT OF THIS OFFSET. IN-KIND CABLE SERVICES AND
6 PAYMENTS INCLUDE ANY CHANNEL CAPACITY AND ALL CAPITAL COSTS AND CHARGES FOR
7 OR IN SUPPORT OF THE USE OF ANY CHANNEL CAPACITY THAT THE CABLE OPERATOR
8 AGREES TO PROVIDE UNDER THIS SUBSECTION.

9 F. THIS SECTION DOES NOT PROHIBIT A LICENSING AUTHORITY FROM REQUIRING
10 A CABLE OPERATOR TO:

11 1. BEAR REASONABLE COSTS THAT ARE ASSOCIATED WITH DAMAGE CAUSED TO
12 PUBLIC STREETS, ROADS AND ALLEYS BY CONSTRUCTION, MAINTENANCE AND OPERATION
13 OF ITS FACILITIES IN THE PUBLIC HIGHWAYS AND THAT ARE IMPOSED ON A
14 COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS IN RELATION TO COSTS BORNE
15 BY TELECOMMUNICATIONS CORPORATIONS UNDER SECTION 9-582, SUBSECTION C.

16 2. PAY FINES, FEES, CHARGES OR DAMAGES FOR BREACH OF THE TERMS AND
17 CONDITIONS OF THE LICENSE.

18 G. THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A LICENSING AUTHORITY
19 TO MANAGE THE PUBLIC STREETS, ROADS AND ALLEYS WITHIN ITS BOUNDARIES OR TO
20 EXERCISE ITS POLICE POWERS.

21 H. A LICENSE THAT IS IN EFFECT ON THE EFFECTIVE DATE OF THIS AMENDMENT
22 TO THIS SECTION, INCLUDING ONE THAT IS LATER RENEWED OR EXTENDED FOR A TERM
23 THAT BEGINS BEFORE JULY 1, 2007, IS ENFORCEABLE IN ACCORDANCE WITH ITS TERMS
24 AND CONDITIONS AS OF JULY 1, 2007 AND IS NOT SUBJECT TO THE LIMITATIONS OF
25 THIS AMENDMENT TO THIS SECTION. IF A LICENSE THAT IS IN EFFECT ON THE
26 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION IS LATER EXTENDED OR RENEWED
27 FOR A TERM THAT BEGINS AFTER JUNE 30, 2007, THE EXTENDED OR RENEWED LICENSE
28 IS SUBJECT TO THE LIMITATIONS OF THIS AMENDMENT TO THIS SECTION AND IS
29 EFFECTIVE ON THE FIRST DAY OF THE RENEWAL OR EXTENSION TERM, UNLESS THE TERM
30 BEGINS BEFORE JANUARY 1, 2008, IN WHICH CASE THE LIMITATION UNDER SUBSECTION
31 C, PARAGRAPH 3 OF THIS SECTION ON THE RATES OF THE LICENSE FEE AND OF ANY
32 TRANSACTION PRIVILEGE TAXES ON GROSS REVENUES IS:

33 1. FIVE PER CENT, IF THE GROSS EFFECTIVE RATE IS FIVE PER CENT OR
34 LESS.

35 2. IF THE GROSS EFFECTIVE RATE IS MORE THAN FIVE PER CENT, FIVE PER
36 CENT PLUS THE FOLLOWING PERCENTAGE:

37 (a) IN THE FIRST YEAR OF THE EXTENSION OR RENEWAL TERM, THE GROSS
38 EFFECTIVE RATE MINUS FIVE PER CENT, MULTIPLIED BY TWO-THIRDS.

39 (b) IN THE SECOND YEAR OF THE TERM, THE GROSS EFFECTIVE RATE MINUS
40 FIVE PER CENT, MULTIPLIED BY ONE-THIRD.

41 (c) IN THE THIRD YEAR OF THE TERM, AND THEREAFTER, ZERO PER CENT.
42 FOR THE PURPOSES OF THIS SUBSECTION, "GROSS EFFECTIVE RATE" MEANS THE
43 PERCENTAGE THAT RESULTS FROM DIVIDING THE SUM OF ALL TAXES, FEES AND CHARGES
44 OF THE LICENSING AUTHORITY THAT THE CABLE OPERATOR ITEMIZED TO SUBSCRIBERS
45 AND PAID TO THE LICENSING AUTHORITY UNDER THE EXTENDED OR RENEWED LICENSE FOR

1 THE TWELVE CALENDAR MONTHS PRECEDING THE EFFECTIVE DATE OF THIS AMENDMENT TO
2 THIS SECTION BY THE CABLE OPERATOR'S GROSS REVENUES FOR THAT PERIOD IN THE
3 AREA OF JURISDICTION AND MULTIPLYING THAT FRACTION BY ONE HUNDRED PER CENT.

4 Sec. 3. Legislative findings

5 The legislature finds and determines that this act is necessary as a
6 matter of statewide concern to ensure that counties, cities, including
7 charter cities, and towns issue licenses to cable operators to use the public
8 streets, roads and alleys on terms and conditions, including fees, taxes and
9 other charges levied and assessed for use of the public streets, roads and
10 alleys, that are equitable. The public policy of this state is that this act
11 be enforced to the fullest extent permitted by federal law.